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17
18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20
21 DAVID and LISA FAIGMAN,
individually and on behalf of a class of
22 others similarly situated,

23 **Plaintiffs,**

24 **vs.**

25 CINGULAR WIRELESS, LLC; and
DOES 1 through 100, inclusive,

26 **Defendants.**
27
28

) Case No. C 06-04622 MHP

) **STIPULATED PROTECTIVE ORDER**

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Stipulated
7 Protective Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords extends only to the limited information or
9 items that are entitled under the applicable legal principles to treatment as confidential.
10 The parties further acknowledge, as set forth in Section 10 (FILING PROTECTED
11 MATERIAL), below, that this Stipulated Protective Order creates no entitlement to file
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that
13 must be followed and reflects the standards that will be applied when a party seeks
14 permission from the Court to file material under seal.

15 **2. DEFINITIONS**

16 2.1 Party: any party to this action, including all of its officers, directors,
17 employees, consultants, retained experts, and outside counsel (and their support staff).

18 2.2 Disclosure or Discovery Material: all items or information, regardless of the
19 medium or manner generated, stored, or maintained (including, among other things,
20 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
21 responses to discovery in this matter.

22 2.3 "Confidential" Information or Items: information (regardless of how
23 generated, stored or maintained) or tangible things that qualify for protection under
24 standards developed under Federal Rule of Civil Procedure 26(c).

25 2.4 "Highly Confidential" Information or Items: extremely sensitive
26 "Confidential Information or Items" whose disclosure to another Party or non-party
27 would create a substantial risk of serious injury that could not be avoided by less
28 restrictive means.

1 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
4 Material in this action.

5 2.7 Designating Party: a Party or non-party that designates information or items
6 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
7 Confidential.”

8 2.8 Protected Material: any Disclosure or Discovery Material that is designated
9 as “Confidential” or “Highly Confidential.”

10 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
11 retained to represent or advise a Party in this action.

12 2.10 House Counsel: attorneys who are employees of a Party.

13 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
14 as their support staffs).

15 2.12 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
17 expert witness or as a consultant in this action and who is not a past or a current employee
18 of a Party or of a competitor of a Party’s and who, at the time of retention, is not
19 anticipated to become an employee of a Party or a competitor of a Party’s. This definition
20 includes a professional jury or trial consultant retained in connection with this litigation.

21 2.13 Professional Vendors: persons or entities that provide litigation support
22 services (e.g., photocopying; videotaping; translating; preparing exhibits or
23 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
24 employees and subcontractors.

25 3. SCOPE

26 The protections conferred by this Stipulated Protective Order cover not only
27 Protected Material, but also any information copied or extracted therefrom, as well as all
28 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or

1 presentations by parties or counsel to or in court or in other settings that might reveal
2 Protected Material.

3 **4. DURATION**

4 Even after the termination of this litigation, the confidentiality obligations imposed
5 by this Stipulated Protective Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
9 Party or non-party that designates information or items for protection under this
10 Stipulated Protective Order must take care to limit any such designation to specific
11 material that qualifies under the appropriate standards. A Designating Party must take
12 care to designate for protection only those parts of material, documents, items, or oral or
13 written communications that qualify - so that other portions of the material, documents,
14 items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this Stipulated Protective Order. Mass, indiscriminate,
16 or routinized designations are prohibited. Designations that are shown to be clearly
17 unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
18 encumber or retard the case development process, or to impose unnecessary expenses and
19 burdens on other parties), expose the Designating Party to sanctions. If it comes to a
20 Party's or a non-party's attention that information or items that it designated for
21 protection do not qualify for protection at all, or do not qualify for the level of protection
22 initially asserted, that Party or non-party must promptly notify all other parties that it is
23 withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this
25 Stipulated Protective Order (see, e.g., second paragraph of section 5.2(a), below), or as
26 otherwise stipulated or ordered, material that qualifies for protection under this Stipulated
27 Protective Order must be clearly so designated before the material is disclosed or
28 produced.

1 Designation in conformity with this Stipulated Protective Order requires:

2 (a) for information in documentary form (apart from transcripts of depositions
3 or other pretrial or trial proceedings), that the Producing Party affix the legend
4 "Confidential" or "Highly Confidential" at the top of each page that contains protected
5 material. If only a portion or portions of the material on a page qualifies for protection,
6 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins) and must specify, for each portion, the level of
8 protection being asserted (either "Confidential" or "Highly Confidential").

9 A Party or non-party that makes original documents or materials available for
10 inspection need not designate them for protection until after the inspecting Party has
11 indicated which material it would like copied and produced. During the inspection and
12 before the designation, all of the material made available for inspection shall be deemed
13 "Highly Confidential." After the inspecting Party has identified the documents it wants
14 copied and produced, the Producing Party must determine which documents, or portions
15 thereof, qualify for protection under this Stipulated Protective Order, then, before
16 producing the specified documents, the Producing Party must affix the appropriate legend
17 ("Confidential" or "Highly Confidential") at the top of each page that contains Protected
18 Material. If only a portion or portions of the material on a page qualifies for protection,
19 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
20 appropriate markings in the margins) and must specify, for each portion, the level of
21 protection being asserted (either "Confidential" or "Highly Confidential").

22 (b) for testimony given in deposition or in other pretrial or trial proceedings,
23 that the Party or non-party offering or sponsoring the testimony identify on the record,
24 before the close of the deposition, hearing, or other proceeding, all protected testimony,
25 and further specify any portions of the testimony that qualify as "Highly Confidential."
26 When it is impractical to identify separately each portion of testimony that is entitled to
27 protection, and when it appears that substantial portions of the testimony may qualify for
28 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke

1 on the record (before the deposition or proceeding is concluded) a right to have up to 20
 2 days to identify the specific portions of the testimony as to which protection is sought and
 3 to specify the level of protection being asserted ("Confidential" or "Highly
 4 Confidential"). Only those portions of the testimony that are appropriately designated for
 5 protection within the 20 days shall be covered by the provisions of this Stipulated
 6 Protective Order. Transcript pages containing Protected Material must be separately
 7 bound by the court reporter, who must affix to the top of each such page the legend
 8 "Confidential" or "Highly Confidential," as instructed by the Party or non-party offering
 9 or sponsoring the witness or presenting the testimony.

10 (c) for information produced in some form other than documentary, and for any
 11 other tangible items, that the Producing Party affix in a prominent place on the exterior of
 12 the container or containers in which the information or item is stored the legend
 13 "Confidential" or "Highly Confidential." If only portions of the information or item
 14 warrant protection, the Producing Party, to the extent practicable, shall identify the
 15 protected portions, specifying whether they qualify as "Confidential" or "Highly
 16 Confidential."

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
 18 to designate qualified information or items as "Confidential" or "Highly Confidential"
 19 does not, standing alone, waive the Designating Party's right to secure protection under
 20 this Stipulated Protective Order for such material. If material is appropriately designated
 21 as "Confidential" or "Highly Confidential" after the material was initially produced, the
 22 Receiving Party, on timely notification of the designation, must make reasonable efforts
 23 to assure that the material is treated in accordance with the provisions of this Stipulated
 24 Protective Order.

25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
 27 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
 28 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a

1 Party does not waive its right to challenge a confidentiality designation by electing not to
2 mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
4 Party's confidentiality designation must do so in good faith and must begin the process by
5 conferring directly (in voice to voice dialogue; other forms of communication are not
6 sufficient) with counsel for the Designating Party. In conferring, the challenging Party
7 must explain the basis for its belief that the confidentiality designation was not proper and
8 must give the Designating Party an opportunity to review the designated material, to
9 reconsider the circumstances, and, if no change in designation is offered, to explain the
10 basis for the chosen designation. A challenging Party may proceed to the next stage of
11 the challenge process only if it has engaged in this meet and confer process first.

12 6.3 Judicial Intervention. A Party that elects to press a challenge to a
13 confidentiality designation after considering the justification offered by the Designating
14 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
15 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in
16 detail the basis for the challenge. Each such motion must be accompanied by a competent
17 declaration that affirms that the movant has complied with the meet and confer
18 requirements imposed in the preceding paragraph and that sets forth with specificity the
19 justification for the confidentiality designation that was given by the Designating Party in
20 the meet and confer dialogue.

21 The burden of persuasion in any such challenge proceeding shall be on the
22 Designating Party. Until the Court rules on the challenge, all parties shall continue to
23 afford the material in question the level of protection to which it is entitled under the
24 Producing Party's designation.

25 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a non-party in connection with this case only
28 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material

1 may be disclosed only to the categories of persons and under the conditions described in
2 this Stipulated Protective Order. When the litigation has been terminated, a Receiving
3 Party must comply with the provisions of Section 11 (FINAL DISPOSITION), below.
4 Protected Material must be stored and maintained by a Receiving Party at a location and
5 in a secure manner that ensures that access is limited to the persons authorized under this
6 Stipulated Protective Order.

7 7.2 Disclosure of "Confidential" Information or Items. Unless otherwise
8 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
9 may disclose any information or item designated CONFIDENTIAL only to:

10 (a) the Receiving Party's Outside Counsel of record in this action, as well as
11 employees of said Counsel to whom it is reasonably necessary to disclose the information
12 for this litigation and who have signed the "Agreement to Be Bound by Protective Order"
13 that is attached hereto as Exhibit A;

14 (b) the present and former officers, directors, and employees (including House
15 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
16 litigation and who have signed the "Agreement to Be Bound by Protective Order"
17 (Exhibit A);

18 (c) Experts of the Receiving Party to whom disclosure is reasonably necessary
19 for this litigation and who have signed the "Agreement to Be Bound by Protective Order"
20 (Exhibit A);

21 (d) the Court and its personnel;

22 (e) any third party mediator(s) appointed by the Court or jointly selected by the
23 parties to assist in a possible resolution of their dispute and who have signed the
24 "Agreement to be Bound by Protective Order" (Exhibit A);

25 (f) court reporters, their staffs, and professional vendors to whom disclosure is
26 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound
27 by Protective Order" (Exhibit A);

28 (g) during their depositions, witnesses in the action to whom disclosure is

1 reasonably necessary and who have signed the "Agreement to Be Bound by Protective
2 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions
3 that reveal Protected Material must be separately bound by the court reporter and may not
4 be disclosed to anyone except as permitted under this Stipulated Protective Order.

5 (h) the author of the document or the original source of the information.

6 7.3 Disclosure of "Highly Confidential" Information or Items. Unless
7 otherwise ordered by the Court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated "Highly Confidential"
9 only to:

10 (a) the Receiving Party's Outside Counsel of record in this action, as well as
11 employees of said Counsel to whom it is reasonably necessary to disclose the information
12 for this litigation and who have signed the "Agreement to Be Bound by Protective Order"
13 that is attached hereto as Exhibit A;

14 (b) Experts of the Receiving Party to whom disclosure is reasonably necessary
15 for this litigation and who have signed the "Agreement to Be Bound by Protective Order"
16 (Exhibit A);

17 (c) the Court and its personnel;

18 (d) any third party mediator(s) appointed by the Court or jointly selected by the
19 parties to assist in a possible resolution of their dispute and who have signed the
20 "Agreement to Be Bound by the Protective Order" (Exhibit A);

21 (e) court reporters, their staffs, and professional vendors to whom disclosure is
22 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound
23 by Protective Order" (Exhibit A); and

24 (f) the author of the document or the original source of the information.

25 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
26 **OTHER LITIGATION**

27 If a Receiving Party is served with a subpoena or an order issued in other litigation
28 that would compel disclosure of any information or items designated in this action as

1 “Confidential” or “Highly Confidential,” the Receiving Party must so notify the
2 Designating Party, in writing (by fax in advance, if possible) immediately and in no event
3 more than three court days after receiving the subpoena or order. Such notification must
4 include a copy of the subpoena or court order.

5 The Receiving Party also must immediately inform in writing the Party who caused
6 the subpoena or order to issue in the other litigation that some or all the material covered
7 by the subpoena or order is the subject of this Stipulated Protective Order. In addition,
8 the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to
9 the Party in the other action that caused the subpoena or order to issue. The purpose of
10 imposing these duties is to alert the interested parties to the existence of this Stipulated
11 Protective Order and to afford the Designating Party in this case an opportunity to try to
12 protect its confidentiality interests in the court from which the subpoena or order issued.
13 The Designating Party shall bear the burdens and the expenses of seeking protection in
14 that court of its confidential material - and nothing in these provisions should be
15 construed as authorizing or encouraging a Receiving Party in this action to disobey a
16 lawful directive from another court.

17 In the event that any information or items designated as “Confidential” or “Highly
18 Confidential,” are provided pursuant to subpoena or compulsory process, such
19 information shall continue to be treated as “Confidential” or “Highly Confidential,” by all
20 persons subject to this Stipulated Protective Order unless and until the Court orders
21 otherwise.

22 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under this
25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
26 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
27 all copies of the Protected Material, (c) inform the person or persons to whom
28 unauthorized disclosures were made of all the terms of this Stipulated Protective Order,

1 and (d) request such person or persons to execute the "Acknowledgment and Agreement
2 to Be Bound" that is attached hereto as Exhibit A.

3 **10. FILING PROTECTED MATERIAL**

4 Without written permission from the Designating Party or a court order secured
5 after appropriate notice to all interested persons, a Party may not file in the public record
6 in this action any Protected Material. A Party that seeks to file under seal any Protected
7 Material must comply with Civil Local Rule 79-5.

8 **11. FINAL DISPOSITION**

9 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
10 days after the final termination of this action, each Receiving Party must return all
11 Protected Material to the Producing Party. As used in this subdivision, "all Protected
12 Material" includes all copies, abstracts, compilations, summaries or any other form of
13 reproducing or capturing any of the Protected Material. With permission in writing from
14 the Designating Party, the Receiving Party may destroy some or all of the Protected
15 Material instead of returning it. Whether the Protected Material is returned or destroyed,
16 the Receiving Party must submit a written certification to the Producing Party (and, if not
17 the same person or entity, to the Designating Party) by the sixty day deadline that
18 identifies (by category, where appropriate) all the Protected Material that was returned or
19 destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,
20 compilations, summaries or other forms of reproducing or capturing any of the Protected
21 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
22 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
23 work product, even if such materials contain Protected Material. Any such archival
24 copies that contain or constitute Protected Material remain subject to this Stipulated
25 Protective Order as set forth in Section 4 (DURATION), above.

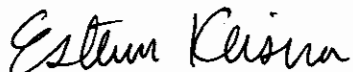
26 **12. MISCELLANEOUS**

27 12.1 Right to Further Relief. Nothing in this Stipulated Protective Order
28 abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order.


IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: November 6, 2006



Esther L. Klisura
COTCHETT, PITRE, SIMON & McCARTHY
Attorneys for Plaintiffs and the Proposed Class

Dated: November 6, 2006



David L. Balser
Nathan L. Garroway
McKENNA LONG & ALDRIDGE LLP
Attorneys for Defendant Cingular Wireless LLC

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 8, 2006



EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Faigman v. Cingular Wireless, LLC*, Case No. C 06-04622 MHP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint [print or type full name] of [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____